twin pillars of innovation and capital formation.

The question as to how derivatives should be regulated is not easy to answer, but Congress should start with some guiding principles. First, derivatives regulation should seek to foster a robust, competitive, and liquid marketplace. Second, systemic counterparty risk exposure must be reduced by incentivizing central clearing and increasing reporting requirements to promote transparency. Third, regulation must preserve the ability to engage in bilateral customized transactions for risk management. Finally, we must coordinate our efforts with the international community to prevent global regulatory arbitrage and the flight of capital to less regulated jurisdictions.

Unfortunately, the regulatory reform proposals making their way through both chambers of Congress fail to take into account the intricacies of this dynamic financial product and expose a fundamental misunderstanding of the way in which the marketplace works. Congress must think through the significant, unintended consequences before we act to mandate that all Over-the-Counter—OTC—derivatives be centrally cleared and executed on exchanges or cash collateralized, as well as subjecting end-users to capital charges. By de-incentivizing companies to use these risk management tools, such proposals will have the perverse effect of increasing business risk and raising costs.

The proposals advocated for by the U.S. Treasury and Chairman of the Senate Banking Committee, Senator CHRISTOPHER DODD, seem to provide too many government mandates and not enough flexibility. The proposed regulatory structure for OTC derivatives is built on an inadequate foundation lacking the staff, expertise, technology, and resources needed to provide truly robust oversight. Clearing and exchange-trading requirements do not accommodate the need for customized transactions. Capital and margin requirements threaten to lock up liquidity. Lack of international coordination guarantees a flight of capital away from our shores.

Derivatives may not be part of the Main Street vernacular, they may be unfamiliar to the local car dealership, but the manufacturers that supply those dealerships know them well. Derivatives provide businesses with access to lower cost capital, enabling them to grow, invest, and retain and create new jobs. With the unemployment rate at 10.2 percent nationally, this is no time to increase uncertainty and business costs.

Congress must be mindful of the mobility of capital in the global marketplace as well. Without a proper regulatory balance, capital can and will accept higher risk for less onerous regulation. We must maintain incentives for business to participate in a large and liquid OTC derivative market, while promoting global coordination to minimize regulatory arbitrage and systemic risk.

Under current proposals, capital requirements that will be imposed on OTC dealers will pass on additional cost to end-users. Coupling these capital costs with a decreasing ability to customize transactions could result in sharply lower usage by end-users. Given that 94 percent of Fortune 500 companies utilize customized OTC derivatives to manage macro-economic risk, providing less certainty to corporate balance sheets will severely undermine confidence in the American marketplace.

Further, the proposal to mandate exchange trading makes little sense in the bespoke OTC derivatives market. The basic assumption of exchange trading reflects the use of standard products. OTC derivates by their very nature are not always standard. In the real world, mandating use of an exchange would inhibit the use of such customized derivates that are useful financial management tools to hedge extremely specific risks. Bespoke derivatives cannot always be substituted with exchange traded or standardized OTC products. Even attempting to craft a carve-out for such derivatives raises the concern of whether the U.S. Securities and Exchange Commission and Commodities Future Trading Commission could agree on what should be traded.

Another red flag raised by the circulating proposals is the unintended consequence of segregating variation margin. The more capital a dealer has to set aside to purchase an asset, the fewer assets it can purchase. Heightened capital requirements restrict a dealer's ability to generate returns on its capital or provide loans to Main Street businesses, students heading to college, or families seeking a mortgage. It also does not protect end users or reduce systemic risk in any demonstrable way.

Corporate scandal and economic failure have provided such a regulatory catalyst many times in the past. It is alarmingly reminiscent of 2002, when Congress enacted Sarbanes-Oxley; introducing a host of new compliance requirements for accounting, corporate governance, and financial disclosure. But, in the years since the legislation took effect, the overhaul has come to be widely regarded as overly complex, unduly burdensome, and a severe disadvantage to American businesses in the global marketplace.

Congress should be instructed by the lessons of the past and not add such regulations that will impede capital formation. The simple, easy, but ultimately wrong answer is to issue a government mandate for every perceived problem. Thinking through the unintended consequences of overregulation and trusting market solutions is more difficult, but it is ultimately the only way to preserve the innovation that powers American markets.

HONORING OUR ARMED FORCES

STAFF SERGEANT JUSTIN M. DECROW

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of SSG Justin M. Decrow. He was a member of the 16th Signal Company, 62nd Expeditionary Signal Battalion. Justin was only 32 years old when he was killed in the tragic November 5 shooting spree at Fort Hood, TX, that took the lives of 13 Americans and left 31 others wounded.

Those who enlist in our Armed Forces make an extraordinary sacrifice, agreeing to routinely face life-threatening dangers abroad as they carry out missions on our behalf. The risks they endure to protect our freedom are never expected to follow them from the theater of war to the safety of American soil, making Justin's death all the more painful and troubling.

Today, I join Justin's family and friends in mourning his untimely death. Justin will be remembered as a loving husband, father, son and friend to many. He is survived by his wife Marikay; his daugther Kylah; and his parents Rhonda Thompson and Daniel Decrow. Justin had returned over the summer from a year's deployment in South Korea before being stationed at Fort Hood.

A native of Plymouth, IN, Justin enlisted in the Army immediately after graduating from high school. At the time of his passing, he was a resident of Evans, GA, where he lived with his high school sweetheart and 13-year-old daughter in a house he built just a few years ago. Justin was planning to become an Army contractor at nearby Fort Gordon, working within his specialty of satellite communications training. At Ford Hood, he had been training soldiers to help new veterans with paperwork. Justin is remembered by family and friends as a very loving man, who enjoyed working with his hands.

While we struggle to express our sorrow over the loss of Justin, we can take pride in the example he set as a soldier, a husband, a father, and a son. Today and always, he will be remembered by family, friends and fellow Hoosiers as a true American hero, and we cherish the legacy of his service and his life.

It is my sad duty to enter the name of Justin M. Decrow in the RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace.

I pray that the Decrow family, and the families of all the victims of this incomprehensible act, can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

MILITARY AND VA APPROPRIATIONS

Mr. BOND. Mr. President, in this ever-difficult era of economic recession